

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOHN KEPHART, an individual; THELMA
LOUISE KEPHART, an individual,

Plaintiffs

v.

ROTECH HEALTHCARE, INC., a foreign
corporation; VITAL CARE, INC., a foreign
corporation,

Defendants

Case No.:2:15-cv-00859-JAD-NJK

**Order Denying Motion to Reconsider
Remand Order**

[ECF 32]

On December 7, 2015, I found that the defendants had failed to meet their burden of establishing that this court has jurisdiction over the subject matter of this case, and I remanded this case back to the Eighth Judicial District Court, Clark County, Nevada.¹ Defendants now ask me to reconsider that remand order, arguing that I have authority to do so under either FRCP 59(e) or 60(b).² Defendants are mistaken. Remand orders based on a lack of subject-matter jurisdiction are not reviewable on appeal or otherwise. Defendants' motion for reconsideration is thus procedurally improper and is denied.

Discussion

Section 1447(c) of title 28 of the United States Code contemplates remand based on a lack of subject-matter jurisdiction or a defect in the removal procedure.³ When a federal court relies on a ground enumerated in 28 U.S.C. § 1447(c) to remand an action back to the state court whence it was removed, 28 U.S.C. § 1447(d) plainly provides that the remand order is "not reviewable on appeal or

¹ ECF 31.

² ECF 32.

³ See *Augon-Schulte v. Guam Election Commn.*, 469 F.3d 1236, 1240 (9th Cir. 2006).

1 otherwise.”⁴ The state court can, in fact, proceed with the case once the remand order is entered and
2 a certified copy of that order is mailed to the state court by the clerk of this court.⁵

3 I remanded this case back to state court because I found that subject-matter jurisdiction was
4 lacking—defendants had not met their burden to establish that the amount in controversy exceeds
5 \$75,000.⁶ Jurisdiction over this action revested in the state court when, on December 7, 2015, the
6 remand order was entered on the docket in this case and the clerk of this court mailed a copy of that
7 order to the state court. I simply do not have the authority to reconsider that remand order.⁷
8 Defendants’ motion for reconsideration is thus procedurally defective and must be denied.

9 In remanding this case, I essentially concluded that this case was not removable at the time
10 that defendants filed their petition for removal. When a case is not immediately removable but the
11 defendant later receives a document that puts it on notice “that the case is one which is or has
12 become removable,” the proper procedure is to file “a notice of removal . . . within 30 days after
13 receipt” of the document establishing that the case is or has become removable.⁸ If defendants
14 believe they received a document establishing that the state-court case is or has become
15 removable, they must follow the procedure outlined in 28 U.S.C. § 1446(b)(3) and be mindful that
16 *this* case has been closed.

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22 ⁴ *Atlantic Nat. Trust LLC v. Mt. Hawley Ins. Co.*, 621 F.3d 931, 934 (9th Cir. 2010) (quoting 28
23 U.S.C. § 1447(d)).

24 ⁵ 28 U.S.C. § 1447(c).

25 ⁶ ECF 31 at 5–6.

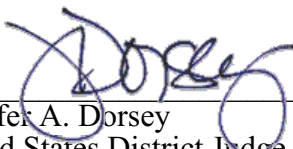
26 ⁷ *See* 28 U.S.C. § 1447(d).

27 ⁸ *See* 28 U.S.C. § 1446(b)(3).
28

Conclusion

ACCORDINGLY, IT IS HEREBY ORDERED that defendants' motion to reconsider the order remanding case to state court [ECF 32] is **DENIED**.

DATED this 21st day of December, 2015



Jennifer A. Dorsey
United States District Judge